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Suppl  
Reply  
Brief

Ralph E. Jocke  
Patent  
&  
Trademark Law

October 27, 2004

Board of Patent Appeals and Interferences  
United States Patent and Trademark Office  
PO Box 1450  
Alexandria, VA 22313-1450

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BOARD OF PATENT APPEALS  
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Re: **Appeal Nos.:** 2005-0064 and 2003-1769  
**Application Serial No.:** 09/014,076  
**Confirmation No.:** 4092  
**Applicants:** Max Fedor, et al.  
**Title:** Method For Tracking And Dispensing  
Medical Items  
**Docket No.:** D-1056 DIV3

Sir:

Please find enclosed a Supplemental Reply Brief in response to the Office Action dated September 15, 2004 for filing in the above-referenced application.

No fee is deemed required. However, the Commissioner is authorized to charge any necessary fee associated with the filing of the Supplemental Reply Brief and any other fee due to Deposit Account 10-0637.

Very truly yours,

A handwritten signature of Ralph E. Jocke.

Ralph E. Jocke  
Reg. No. 31,029

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I hereby certify that this document and the documents indicated as enclosed herewith are being deposited with the U.S. Postal Service as Express Mail Post Office to addressee in an envelope addressed to Board of Patent Appeals and Interferences, United States Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313-1450 this 27<sup>th</sup> day of October 2004.

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Appeal Nos.: **2005-0064 and 2003-1769**

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In re Application of:

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**Max Fedor, et al.**

)

Art Unit 3653

Serial No.: **09/014,076**

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Confirm. No.: **4092**

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Patent Examiner  
Michael E. Butler

Filed: **January 27, 1998**

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Title: **Method For Tracking And  
Dispensing Medical Items**

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**SUPPLEMENTAL REPLY BRIEF PURSUANT TO 37 C.F.R. § 41.41**

Sir:

The Appellants hereby submit a Supplemental Reply Brief pursuant to 37 C.F.R. § 41.41 concerning the above-referenced Application.

## **Initial Comments**

The Office Action dated September 15, 2004 is acknowledged. The Office Action was labeled "Response to Remand from the Board for Examiner Queries." The Office Action does not appear to constitute a Supplemental Examiner's Answer. Thus, it is unclear whether a Supplemental Reply Brief is even required. Appellants request that the appeal be maintained.

## **Remarks regarding the Remand**

Remarks regarding remand Issues I, II, III, and IV:

### **Issue I**

Appellants agree with the Examiner concerning the withdrawal of rejections. "Grounds of rejection not argued in the examiner's answer are usually treated as having been dropped." (MPEP § 1208). The Examiner's Answer already vacated the following two rejections:

The rejection of claims 48-53 pursuant to 35 U.S.C. § 102(e) as being anticipated by Halvorson.

The rejection of claims 48-53 pursuant to 35 U.S.C. § 103(a) as being unpatentable over Pearson '029.

## **Issue II**

The Examiner acknowledges that Pearson '232 is applied to anticipate all the pending claims, except for claims 42 and 44. This is confirmed by having Pearson '232 separately applied in an anticipatory rejection against claims 38-41, 43, and 45-53.

The 35 U.S.C. § 103(a) rejection involving Pearson '232 and Meador does not include claim 44. It follows that the 35 U.S.C. § 103(a) rejection is only applicable to claim 42. Thus, the Examiner has clarified that only claim 42 is rejected pursuant to 35 U.S.C. § 103(a) over Pearson '232 in view of Meador. Appellants agree with the Examiner that the issue has been clarified.

## **Issue III**

In a manner similar to Issue II, the Examiner has clarified that only claims 42 and 44 are rejected pursuant to 35 U.S.C. § 103(a) over Pearson '232 in view of Blechl. Appellants agree with the Examiner that the issue has been clarified.

## **Issue IV**

Appellants agree with the Examiner that the 35 CFR § 1.131 Declaration is sufficient in establishing an earlier date.

## **STATUS OF CLAIMS**

Claims 38-53 are pending in the Application.

Claims rejected: 38-53

Claims allowed: none

Claims confirmed: none

Claims withdrawn: none

Claims objected to: none

Claims canceled: 1-37

## **GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

The questions presented in this appeal are:

- 1). Whether Appellants' claims 38-41, 43, and 45-53 are unpatentable under 35 U.S.C. § 102(e) as being anticipated by Pearson '232.
- 2). Whether Appellants' claims 48-53 are unpatentable under 35 U.S.C. § 102(e) as being anticipated by Pearson '029.
- 3). Whether Appellants' claim 42 is unpatentable under 35 U.S.C. § 103(a) over Pearson '232 in view of Meador.
- 4). Whether Appellants' claims 42 and 44 are unpatentable under 35 U.S.C. § 103(a) over Pearson '232 in view of Blechl.
- 5). Whether Appellants' claims 48-53 are unpatentable under 35 U.S.C. § 103(a) over Halvorson.

## ARGUMENT

The Appeal Brief filed on March 9, 2001 and the Reply Brief filed on March 31, 2003 are herein incorporated by reference. Please refer to Appellants' previous arguments regarding all the issues of record. It is respectfully submitted that no other comments by Appellants are deemed necessary with regard to the Office Action dated September 15, 2004.

## **CONCLUSION**

Each of Appellants' pending claims specifically recites features, relationships, and steps that are neither disclosed nor suggested in any of the applied prior art. Furthermore, the applied prior art is devoid of any teaching, suggestion, or motivation for combining features of the applied prior art so as to produce the recited invention. For these reasons it is respectfully submitted that all the pending claims are allowable.

Respectfully submitted,

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